

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

3 -----x
4 UNITED STATES OF AMERICA :
5 versus : Criminal Action Number
6 SAMMY ARAYA : 1:15-CR-301
7 Defendant. :
8 -----x
9 -----x

10 UNITED STATES OF AMERICA :
11 versus : Criminal Action Number
12 MICHAEL HENDERSON : 1:15-CR-301
13 Defendant. :
14 -----x
15 -----x

16 UNITED STATES OF AMERICA :
17 versus : Criminal Action Number
18 JEN SEKO : 1:15-CR-301
19 Defendant. :
20 -----x

21 April 20, 2017

22 VOLUME I OF VIII

23 (Government's Rebuttal Argument)

24 The above-entitled Jury Trial was continued
25 before the Honorable James C. Cacheris, United
States District Judge.

THIS **EXCERPT** TRANSCRIPT REPRESENTS THE PRODUCT
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THE CASE AS RECORDED.

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1 (Previous arguments were had but not included herein.)

2 **REBUTTAL CLOSING ARGUMENT**

3 MS. BATEMAN: Good morning, ladies and
4 gentlemen. Thank you again for your time and attention
5 throughout this case. We know it's been a sacrifice for
6 you to take two weeks out of your lives and sit through
7 this. But we're very grateful for the time and attention
8 you've given us and for how seriously you've taken this
9 very serious responsibility.

10 You've heard a lot of evidence, you've seen a
11 lot of documents. So I don't want to rehash this entire
12 case. I just want to leave you with a few final thoughts.

13 The very beginning of this trial early last week
14 we told you this case was going to be about lies and
15 deception. And that's exactly what it was.

16 And now the defense's arguments you've seen is
17 all about their excuses and explanations. And I do want
18 to be clear they don't have a burden. They didn't have to
19 come up here and give you a closing argument. They didn't
20 have to call witnesses or do anything like that. But,
21 when they do argue things to you, you can evaluate them
22 and use your common sense. Ask whether they make sense,
23 whether those arguments are supported by the facts or the
24 evidence, whether they're reasonable.

25 And it will be your choice, but we'd submit we

1 have proven more than enough evidence and testimony that
2 all three of these individuals are guilty beyond a
3 reasonable doubt. You'll have to consider each one of
4 them individually. There will be a separate verdict form
5 for each one. So that's why I am going to talk about each
6 one of them one by one in order.

7 I'm going to pick up right back where Mr.
8 Fallgatter left off with these mailers and with his
9 client, defendant Jen Seko. Now there's no dispute in
10 this case about what her role was. Doing all the
11 research, finding all of these people, and then targeting
12 them and sending out the mailers. And no one has disputed
13 that. The question is just her knowledge and her intent.
14 And this isn't mud on the wall, ladies and gentlemen.
15 This is the actual language. We think you'll hear in the
16 instructions that Judge Cacheris is going to give you soon
17 about deliberate ignorance. That nobody can avoid
18 responsibility for a crime by deliberately ignoring what
19 is obvious. It's sometimes known as an ostrich
20 instruction. And that image sort of makes sense, you
21 can't just stick your head in the sand and ignore what's
22 going on around you. You can't just lie about all of the
23 fake names and aliases that people are using and changing
24 up from time to time. Ignore the word salad of which
25 company of the week are we now. Is it Retention Services,

1 have we changed to Home Preservation Group. And then from
2 Home Preservation Group to Equity Restoration Group. Just
3 synonyms for the same fake organizations.

4 You can't just close your eyes and wish away
5 what's actually happening. You've seen this e-mail before
6 and you'll have it back in the deliberation room. This is
7 deliberate ignorance. This is her saying: I know people
8 are complaining that they are not getting their mortgages
9 actually modified, but I am going to "cross my fingers"
10 that that doesn't keep happening, that those people don't
11 keep calling in and that I don't get caught. I'll put
12 somebody else's name on the postal permit, I'll have them
13 sign these little disclaimer forms, I'll put fine print on
14 my mailers, and I'll just "cross my fingers" that all of
15 those people that I know are getting scammed in the back
16 room won't call to complain. That's deliberate ignorance.

17 And the Judge will tell you that that's
18 equivalent to knowledge. But more than that, we know that
19 she actually knew.

20 Mr. Fallgatter said that nobody from the
21 Government was going to be able to stand up and say that
22 somebody had told her that they were being -- that the
23 victims were being scammed. But you heard from that
24 person, inspector Rocio Gonzalez. She told defendant Seko
25 that twice. They've talked a lot about the cooperators

1 and drug use and everything like. But Investigator
2 Gonzalez, you saw her. She's not a personal meth user,
3 she doesn't use cocaine, she didn't sign a plea agreement
4 with the Government. That's true. She's a law
5 enforcement officer and she works for the government. So
6 you should evaluate that as part of her credibility. But
7 you got to see her testify. You heard her polite
8 responses to questions. How she was responsive to the
9 questions on cross-examination. You could see from her
10 demeanor what happened when she went to Jen Seko's place
11 of business. She walked in politely and respectfully but
12 firmly told the defendant "What you are doing, sending out
13 these mailers for these particular companies is leading to
14 them being defrauded." And she told her that twice.

15 Then we have to think about what Jen Seko did
16 after that. Now there was a lot of talk on the closing
17 arguments about Matt Kelly. And there's plenty of
18 evidence and testimony that Matt Kelly was the same person
19 as Simon Andrews and that Jen Seko knew all of that and
20 she was sending e-mails to Sammy Araya about Matt's print
21 jobs, so she knew what was going on. But honestly, we
22 don't need Matt Kelly. You can think about the timeline
23 of events and all the other e-mails and all the documents
24 that were found on her computer.

25 Because this is something that Mr. Fallgatter

1 didn't talk about. He talked about that undercover
2 recording that was made on April 1st of 2013. Keep in
3 mind that was after the postal inspector had already come
4 in January. It was after in the intervening months
5 between January and April 1st of 2013. Ms. Seko had been
6 paid over \$150,000 in cashier's check from Sammy Araya.
7 So we don't know what the circumstances were leading up to
8 that call and what they may have discussed beforehand
9 about what to do if the postal inspector came back.

10 But what we do know, what that call shows, and
11 what her subsequent actions prove is that she knew what
12 was going on was wrong. Maybe one customer got a refund.
13 They gave one guy his money back to try to throw law
14 enforcement off. That's not a defense. It proves that
15 she knew people were complaining about not getting their
16 mortgages modified. And, she said that regardless of
17 whatever Sammy was telling her on that call, she wasn't
18 buying his story about people actually getting mortgage
19 modifications, because her claim all along has been, "I
20 stopped. I didn't deal with Sammy Araya after that."
21 That's what she told Inspector Gonzalez in an e-mail she
22 sent in May of 2013. That's what she said when she was
23 arrested and that's what she said now, but that isn't
24 true. And you know that from these other e-mails.
25 E-mails after April 1, 2013. And you've seen these when

1 Mr. Faulconer presented them to you. So I'm not going to
2 go through them all again. But you can read them all.
3 They are from Jen Seko to abcinctv@gmail.com. The same
4 e-mail address she'd been using to correspond with Mr.
5 Araya all along. And they said that we wouldn't have any
6 proof from her computer of the fact that she was still
7 doing mailings from Mr. Araya after the second postal
8 inspector visit. But that's what these e-mails are
9 discussing, the e-mails and the voicemails about mailers,
10 about print jobs, about money that she's going to be paid,
11 about credit card information. And eventually about her
12 giving Sammy Araya ABC Marketing, his own e-mail address,
13 at her mom and pop print shop company.
14 Sam@sekodirect.com. You didn't hear one word about this
15 from her attorney.

16 These aren't e-mails with Matt Kelly, they're
17 with Sammy Araya. Somebody she was told twice was a
18 fraudster. She kept doing business with him and even
19 invited him into the fold. And you didn't hear any
20 explanation for that because there is none.

21 You also heard those voicemails. His own words
22 again. And this is just the one that was played, but we
23 encourage you to listen to them all. They are all
24 throughout the fall of 2013. Voicemails from Sammy left
25 on her computer, saved on those computers where he's

1 calling to talk about mailing him and sending out more
2 mail from the USPS, the United States Postal Service, that
3 she's doing on his behalf. The computer doesn't lie. The
4 e-mails don't lie and the voicemails don't lie either.
5 And they prove that she was knowingly participating after
6 April 1, 2013. And this doesn't lie either, because
7 there's a lot of discussion about the contents of these
8 mailers and certainly there are a lot of statements that
9 are very misleading and some that are outright false. But
10 what's important to note about these two dates and these
11 two documents: That one, is a document, a flyer, courtesy
12 of Retention Services that she gave to Postal Inspector
13 Gonzalez all the way back in January of 2013 and said,
14 "This is the mailer courtesy of that company that I'm
15 sending out for Sammy Araya."

16 And then over a year later in June 2014 her
17 business is searched and it's not just the same mailer
18 that's found. That statement that they quoted about "It's
19 not all about the contents of the mailers, it's about
20 whether the company that's behind them is actually
21 legitimate is actually backed up by something real." It's
22 the same company. The same document. The same mailer.
23 And again, it says "courtesy of Retention Services."
24 She's still sending the mail for the same sham entity over
25 a year later knowing what's going on behind the scenes.

1 And that's why she's here, because in the
2 intervening over a year, a year and several months,
3 between when Postal Inspector Gonzalez first visited her
4 and then when her business was searched later, she kept
5 doing all of this research and all these real people and
6 their houses and their mortgages --

7 MR. FALLGATTER: Your Honor, I object to her
8 saying it was mailed. It was found there in June and
9 there's no evidence that it was mailed.

10 THE COURT: Overruled. Go ahead.

11 MS. BATEMAN: In the intervening months she was
12 still doing the research --

13 THE COURT: Let me say one other thing, final
14 arguments are not evidence in the case. Go ahead.

15 MS. BATEMAN: And ladies and gentlemen, you'll
16 have the statements from all of the U.S. Postal Service
17 statements, which show that mail is being sent out from
18 Permit 78, which wasn't even opened until September of
19 2013. So it was still being sent at that time. The
20 e-mails. The e-mail traffic attaching some of those
21 postal statements between Jen Seko and Sammy Araya, ABC
22 Marketing showing that those mailers are going out. And
23 that's why she's here. That's why she's sitting in this
24 same defendant chair that Inspector Gonzalez warned her
25 she would be sitting in if she kept on doing business as

1 usual with Sammy Araya.

2 And, so we ask that you don't let her hide
3 behind the fact that she owns a business and that she had
4 a different role from some of the other different
5 individuals in this case. That's true. But as the judge
6 will instruct you, the question in this case is not about
7 whether each individual defendant made each individual
8 lie. It's a conspiracy. And so if what she was doing was
9 enabling the other people on the other end of the phone
10 line to continue scamming these people and defrauding them
11 out of their money, then she's knowingly part of that
12 conspiracy. And if their reasonably foreseeable actions
13 at defrauding those people are furthering that scheme,
14 then those actions are also attributable to her.

15 And there also were those material statements.
16 In this flyer, you heard from some of the victims, Mr.
17 Seunath, for example, who told you that that statement,
18 what she couldn't have possibly have thought was true,
19 that, "We've been trying to reach you with no success.
20 There's a case manager standing by and please contact them
21 to get some assistance and help." He told you, I wouldn't
22 have called that number right below that statement if I
23 had known that there wasn't really a company there that
24 was trying to reach me. If I had known that it was just a
25 front and that that company didn't even have my contact

1 information until after the mailer was sent out. So those
2 are material misrepresentations and you can consider that.

3 And when you consider their argument that she
4 was just at the beginning of the process and everybody
5 else was running the back door operation, ladies and
6 gentlemen, she was the front door. If you think about it
7 like somebody who picks a lock to someone's house and then
8 the other co-conspirators that they are working with go in
9 and steal the TVs and steal the jewelry and steal the
10 cash. The person who picked the lock is just as
11 responsible.

12 And that's what she was doing. She was hooking
13 the people in, she knew that it was wrong, she was warned
14 multiple times, she was told that they were defrauding
15 people. And she kept doing it. Because, as you heard,
16 Sammy Araya was her biggest customer, he gave her the
17 highest profit margins and she wanted to keep getting the
18 money. In some ways that's understandable, but it's not
19 excusable. It's still a crime.

20 I want to talk now about the other defendant in
21 this case. Michael Henderson. And you heard from his
22 attorney last night and he told you essentially that
23 Michael Henderson didn't know what he was doing either.
24 That it was all just too complicated for him to figure
25 out. But again deliberately ignoring reality of what's

1 going on, being blind to what's actually happening isn't a
2 defense. That's actually just a part of the legal
3 instruction on knowledge. But you don't even need to rely
4 on that instruction for Michael Henderson, because again
5 the evidence bears out that he knew what he was doing and
6 he knew it was wrong. He just wasn't lost in a complex of
7 web of things that didn't make sense. He was actually the
8 one who was sophisticated enough to go get fictitious
9 companies registered with actual states, to have actual
10 certificates. And then to go into multiple banks and open
11 those up. To go into multiple mailbox stores and open up
12 the mailboxes that was used to deliver the money.

13 And he was sophisticated enough to then go into
14 those banks and withdraw all of the money that was coming
15 in. And it's obvious what's going on here. You can look
16 at those bank accounts. This is from that Chase Bank that
17 he opened up in the name of trust funding. All of these
18 checks coming in from various homeowners, including the
19 third one down on the left-hand side. That's the check
20 that David Augustin and his wife, Jessica Jean Lord sent
21 in trying to modify their mortgage. And then the money
22 was withdrawn with a signature, and you can judge it for
23 yourselves, from Michael Henderson.

24 So is it really just a mistake or just an
25 accident? Do you really not know what was going on when

1 all of these checks, this is 11 checks from other
2 homeowners were coming into that account that he had
3 opened, and again he was withdrawing huge sums of money,
4 lump sums of cash. So you'll have to use your common
5 sense and ask does it make any sense that he didn't know
6 that what he was doing was furthering a fraud.

7 And then he actually directly scammed some
8 people. You heard from Auntrae Boyd who said he had a
9 conversation on the phone with a Michael Henderson. He
10 was talking to Michael Henderson as he was driving to go
11 wire money to Michael Henderson where he could pick it up.

12 And so, then you also heard from Ronald Day who
13 was scammed out of over \$35,000 in a variety of different
14 forms that mostly ended up in Michael Henderson's hands.
15 Checks that he signed out of those accounts where Ronald
16 Day transferred the money in, and then Michael Henderson
17 paid out somebody else like Ian Plymesser, who was
18 involved in this scheme.

19 And this is a slide that you've already seen, so
20 I don't want to focus too much on this one. But this is
21 the MoneyGram wire transfers from all of those individuals
22 that wired money directly to Michael Henderson and they
23 were picked up by Michael Henderson using his name, using
24 his driver's license in California. But this is a part of
25 that slide that we didn't talk about much yet. This is a

1 line from an individual you didn't hear from, Linda
2 Buchmann. And she didn't testify. But this document
3 actually speaks for itself.

4 And what it shows is that she wired money
5 through MoneyGram to Michael Henderson and she had a
6 chance to write a little comment. She wrote "Wells Fargo
7 payment." This is a payment for my mortgage. But it
8 didn't go to Wells Fargo. It was signed for by Michael
9 Henderson. He took it out. He pocketed it. And he knew
10 what he was doing was wrong.

11 So at the end of day, it may be true he was
12 brazen and he was quite bold to do this in his own name,
13 using his own driver's license. But being a bold or a
14 brazen criminal is not an excuse or a defense.

15 So finally, we come to the person who in some
16 ways really started it all.

17 MR. FALLGATTER: Your Honor, I understood the
18 Government reserved 15 minutes. They've been going for
19 about 18.

20 THE COURT: She's going for 15. I will give her
21 about three more minutes.

22 MS. BATEMAN: That's fine. I think Mr.
23 Faulconer took 40 so we were keeping the rest of the hour
24 for me.

25 THE COURT: Yeah, go ahead. Right.

1 MS. BATEMAN: So, I'll be brief then on Sammy
2 Araya, the mastermind of it all.

3 Now he's tried to blame everybody else in his
4 organization and tried to make it sound like it was just
5 rogue employees off doing their own thing. And to be sure
6 the documents from the Las Vegas search -- you'll be able
7 to see them all -- and they don't have his name. By and
8 large they don't have anybody's name except for the names
9 of the victims.

10 The list of the people that were actually
11 running this, those are alias names, those are fake names.
12 And we know from the testimony and from the documents that
13 Sammy Araya was connected to those Las Vegas folks, they
14 were on team Voltron, which is one of his teams. He said
15 so in those e-mails. He tried to fragment it all to try
16 to defuse responsibility and then create competition
17 between the sales teams, but team Voltron, his own words,
18 his own e-mails, he says, "It's all one company just broke
19 up by a sales floor."

20 And then we know that those individuals that
21 were scammed and their information was found in Las Vegas
22 were tied to this scheme because, for example, Jessica
23 Jean Lord and David Augustin, their information was found
24 at the Vegas search, but it was also in Jen Seko's
25 computer. Somebody that Sammy Araya was dealing with on a

1 daily basis or a weekly basis to place mailer orders.

2 And then it was also the -- the check that he
3 sent was also deposited into an account that was opened by
4 Michael Henderson.

5 And so Sammy Araya he may have had other people
6 do the dirty work all in the middle, but his fingerprints
7 are all over the starting line and the finish line in this
8 case. His e-mails ordering the mailers for all of his
9 different teams are what started it all. And then his
10 fingerprints are all over the money, the bank accounts
11 that he used as his personal piggy banks essentially to
12 pay for his trips to fund Make It Rain TV and to pay his
13 Amex bills. And you've seen all of those documents.

14 And his attorney said there won't be any checks
15 from ABC Marketing. Well, here are a couple.
16 Government's Exhibits 128-12 and 13. They are from the
17 same bank account that Michael Henderson opened. That's
18 the check that David Augustin sent, was deposited into
19 that account, and these ABC Marketing checks are from a
20 date before and six days after David Augustin's payment
21 that he thought was going to modify his mortgage.

22 So finally, this video. Now, yes, the video
23 does have some ostentatious displays of things that were
24 bought for a lot of money. But we're not pounding the
25 table about it. And if you watch it again, don't even

1 focus on all of that expensive stuff. The important thing
2 about this video, the people and how they interact with
3 each other. And what's clear, the star of the show is
4 Sammy Araya. He's the one ordering people around, giving
5 the tour. Nick Estilow appears in it as a bit player.
6 Roscoe Umali, the mastermind Roscoe Umali you've heard so
7 much about, is playing the piano. But, it's Sammy Araya
8 that is walking through the whole thing. And that's
9 exactly how it's been throughout this case.

10 So finally, you've heard a lot in the closing
11 arguments about how this may have been victims out for
12 revenge or it was all just co-conspirators who made it all
13 up in a back room. A big Government conspiracy.

14 But these are the names of the people who aren't
15 in jail, who don't want anything from the Government. For
16 example, Nadi Abraham. Victor Kumar, Su Lohia. The
17 people from the mailbox stores who testified. Boolai Kim,
18 who works as a postal clerk out in Fullerton. Ivorie
19 Ladd, she testified she worked at the Chase Bank where
20 Michael Henderson opened up that bank account that was
21 closed for suspicious activity. And then the MoneyGram
22 witnesses. These two individuals who worked for MoneyGram
23 or who worked at the Albertsons store, like Ms. Chaiwan
24 where Michael Henderson picked up those payments.

25 THE COURT: You have about two minutes. Go

1 ahead.

2 MS. BATEMAN: Thank you, Your Honor. These
3 people didn't cook up their evidence or their testimony.
4 They had no reason to lie. Most of them have probably
5 never even met each other.

6 But they all came in and offered their testimony
7 and it's all backed up by all of the documents and right
8 there it proves the involvement of all of these
9 individuals. The mailboxes, and Boolai Kim show the
10 involvement of Jen Seko, Michael Henderson. The MoneyGram
11 witnesses show Michael Henderson's involvement with
12 getting wire transfers. And then Justin Acosta, who again
13 has no reason to lie, came in from YouMail and played all
14 those voicemails, they were sent to Sammy Araya with
15 victim complaints. Sammy Araya making reservations at
16 various restaurants just like the cooperators told you and
17 Sammy Araya spending the money.

18 None of these people had any bias or reason to
19 lie. And they alone are enough to prove all of these
20 three defendants' guilt.

21 So we'd ask that you just go back in that
22 deliberation room and render a verdict that's consistent
23 with the evidence. We understand that you don't have an
24 easy job. The case is now going to be in your hands.
25 We're asking you to return a verdict of guilty on all of

1 these counts, against all of these individuals, because
2 all of them conspired and they're all responsible for
3 defrauding these victims.

4 Thank you.

5
6 (Closing Jury Instructions were given at this time, but
7 not included herein.)

CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Trial in the case of the **UNITED STATES OF AMERICA versus SAMMY ARAYA, et al**, 1:15-CR-301, in said court on the 20th day of April, 2017.

I further certify that the foregoing 21 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 4th day of May, 2017.



Tonia M. Harris, RPR
Official Court Reporter